

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

IN RE:

JUAN JOSE GUERRERO SR
GRACIELA LUNA GUERRERO

Debtors

§
§
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§
§

Case #: 09-52656 -CAG
Chapter 13

Honorable Craig A. Gargotta

**TRUSTEE'S OBJECTION TO DEBTOR'S MOTION TO VOLUNTARILY DISMISS CHAPTER
13 CASE PURSUANT TO 11 U.S.C. §1307(b)**

NOW COMES, Mary K. Viegelahn, Chapter 13 Trustee ("Trustee") and for her Objection to Debtors' Motion to Voluntarily Dismiss Chapter 13 Case Pursuant to 11 U.S.C. §1307(b) says as follows:

- 1) The Petition for relief was filed on July 16, 2009. The Plan was confirmed on November 9, 2009. The Plan payment is \$1,120 per month. The Plan arrears through November are \$3,360.00 which is the amount necessary to pay of the current plan base.
- 2) The aggregate amount of allowed general unsecured claim is \$53,122.69. The plan currently pays a dividend of 1.728% or \$917.96 to this class of creditors.
- 3) On September 30, 2014, an Agreed Order on the Trustee's Motion to Dismiss the case for material default and plan infeasibility. The Agreed Order states "The Debtor shall complete the plan on or about November 30, 2014."
- 4) On November 5, 2014, the Debtors filed a Supplemental Schedule B listing a Personal Injury Claim relating to bladder mesh for an Unknown value. The Trustee asserts this claim is property of the Estate pursuant to 11 U.S.C. § 1306 and to the extent the Debtors have received funds on the claim, those funds should be turned over to the Trustee for disbursement to the allowed, general unsecured creditors.
- 5) On December 3, 2014, the Trustee requested additional information and documentation on the Personal Injury Claim. The Trustee questioned when the accident occurred, when the lawsuit had been filed and current status of the settlement for the Personal Injury claim.
- 6) On December 4, 2014, the Debtors filed a Motion to Voluntarily Dismiss the Chapter 13 case (hereafter referred to as "Motion").
- 7) The Trustee is opposed to the Debtors' Motion in that it appears to be filed in bad faith. The Trustee questions if the Debtors have received funds from the settlement of the personal injury suit and rather than turnover the post-petition asset, the Debtors are now seeking to retain the funds at the expense of the unsecured creditors.

WHEREFORE, the Trustee respectfully prays:

- A. That this Court denies the Motion.
- B. That this Court grant such other relief as it finds just and equitable.

December 5, 2014

/s/ _____

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the attached document was served on the parties listed below by U.S. Mail or served electronically through the Court's ECF System at the e-mail address registered with the Court on **December 05, 2014.**

Debtor(s):

JUAN JOSE GUERRERO, SR
GRACIELA LUNA GUERRERO
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PLEASANTON, TX 78064

UNITED STATES TRUSTEE
P O BOX 1539
SAN ANTONIO, TX. 78295-1539

UNITED STATES BANKRUPTCY COURT
615 E. HOUSTON RM 597
SAN ANTONIO, TX. 78205

AND TO THE CREDITORS AND PARTIES IN INTEREST LISTED BELOW:

Attorney For Debtor(s)
RICK FLUME
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900 NE LOOP 410 STE E105
SAN ANTONIO, TX 78209

/S/

JESSICA L. HANZLIK